GLADYS YONICH
DORIS L. HARTLEY

IBLA 83-422, 83-423 Decided July 25, 1983

Appeals from decisions of the Nevada State Office, Bureau of Land Management, rejecting small tract applications and offering direct sale of tracts for the current fair market value. NEV-024640 and NEV-022816.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Repealers -- Small Tract Act: Generally

   The Small Tract Act, 43 U.S.C. § 682a (1976), was repealed by sec. 702 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976.

2. Applications and Entries: Vested Rights -- Small Tract Act: Applications

   The mere filing of a small tract application does not create in the applicant any right or interest in the land. An applicant for land under the Small Tract Act, 43 U.S.C. § 682a (1976), cannot acquire any right or interest in the land by virtue of administrative delay in processing the application.

APPEARANCES: Gladys Yonich, pro se; Doris L. Hartley, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

In 1954 applications NEV-024640 and NEV-022816 were filed 1/ pursuant to the Small Tract Act of June 1, 1938, as amended, 43 U.S.C. § 682a (1976). By letter decisions dated January 31, 1983, the Bureau of Land Management (BLM), rejected the applications stating that because the Small Tract Act

1/ Gladys Yonich filed NEV-024640. Her appeal has been docketed as IBLA 83-422. Paul R. Hartley filed NEV-022816. An appeal has been filed by Doris L. Hartley (Mrs. Paul R.) and docketed as IBLA 83-423.

had been repealed with the passage of section 702 of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2789, on October 21, 1976, the provisions of the Small Tract Act no longer applied. Appeals were filed from the rejection of the applications. Because of the similarities in the situations and issues involved, we consolidated these cases for consideration on appeal.

In their respective statements of reasons for appeal, Yonich and Hartley state that FLPMA did not repeal the Small Tract Act, but only foreclosed the further filing of applications for small tracts. As their small tract applications had been on file with BLM for more than 25 years, they contend that they have a vested interest to receive the small tract for which each one filed. They suggest that BLM held the land in trust for them pending disposition of the conflicting mineral interests. Appellants argue that the "pink slips" (receipts for filing fee and advance rental) issued to each of them by BLM represent a binding contract. Finally, they contend generally that the current appraisals do not reflect fair market value because they are too high.

[1] Looking at the first argument, section 702 of FLPMA, styled "Repeal of laws relating to homesteading and small tracts," reads as follows: "Effective on and after the date of approval of this Act, the following statutes or parts of statutes are repealed * * *." Included among the laws repealed by this section are the Act of June 1, 1938, 52 Stat. 609 (the original Small Tract Act), the Act of July 14, 1945, 59 Stat. 467, and the Act of June 8, 1954, 68 Stat. 239 (both amendatory Acts to the original Small Tract Act). Contrary to appellants' belief, the Small Tract Act was effectively repealed October 21, 1976, by FLPMA. John N. Dillingham, 73 IBLA 156, 158 (1983).

[2] The argument that the "pink slip" issued by BLM represents a binding contract has no merit. The Department has long held that an applicant for land under the Small Tract Act cannot acquire any right or interest in the land by the filing of an application, nor may any such right or interest be acquired because of a delay in the processing of the application. The filing of an application entitles the applicant only to have the application considered. Leon H. Rockwell, 72 IBLA 373 (1983), and cases cited. 2/

2/ By decision dated May 10, 1962, BLM rejected the applications and offered the applicants alternate sites nearby. BLM later modified its decision to allow the original applications to remain pending. On May 1, 1964, BLM again allowed appellants the chance to obtain an alternate tract.

Accompanying each decision dated Jan. 31, 1983, was a letter which offered a chance to purchase, without competitive bid, an alternate tract to be selected from an enclosed list of available lands because the parcel involved was "encumbered with a conflict." A Nov. 23, 1982, form letter sent by BLM had described the encumbrances relating to a number of parcels as existing and proposed easements across the tracts or that the tracts were on flood plains.

There is no indication in the case file that either of the appellants responded to any BLM notice which listed tracts available for purchase.

Since the parcels applied for by appellants were encumbered by a conflict BLM offered them each an opportunity to select a parcel from a list of available lands which set forth the fair market value for each tract. Appellants made no selection but complained generally that the quoted values were too high. Appellants have submitted no evidence to support their claim that the prices set forth by BLM do not represent fair market value. BLM's values are supported by a comprehensive appraisal report.

FLPMA repealed the Small Tract Act in 1976, during protracted litigation which had impeded the processing of the applications. 3/ The time consumed by the various appeals cannot be attributed to lack of expedition by BLM.

Sales of public land are now governed by section 203 of FLPMA, 43 U.S.C. § 1713 (1976), and for land in Clark County, Nevada, by P.L. 96-586, Act of Dec. 23, 1980, 94 Stat. 338. These statutes require sale of public lands for not less than current fair market value. See 43 U.S.C. § 1713(d) (1976).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Bruce R. Harris
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Douglas E. Henriques
Administrative Judge

3/ Conflicts with unpatented mining claims delayed adjudication of the small tract applications. Resolution of the conflicts did not occur until Mar. 23, 1981, when the U.S. Supreme Court denied certiorari of a circuit court ruling (McCall v. Boyles, 624 F.2d 192 (9th Cir. 1980)), which affirmed the decision of the U.S. District Court of Nevada. McCall v. Watt, 450 U.S. 997 (1981).